EDITOR'S NOTE

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ORIGINAL

No. 94-9323

Supreme Court, U.S.
FILED
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In The
Supreme Court of the United States

October Term 1994

ALEXIS LAWRENCE, on behalf of KEMMERLYN D. LAWRENCE, a minor,

Petitioner,

v.

DONNA SHALALA, Secretary, Health and Human Services,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION OF WRIT OF CERTIORARI

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20 pp

QUESTION PRESENTED FOR REVIEW

Whether the Trial Court's application of North Carolina law with the Social Security Act in denying the Petitioner benefits of a deceased wage earner under the Social Security Act violates the Petitioner's constitutional right to due process and equal protection of the laws of the United States of America under the Fifth and Fourteenth Amendments to the Constitution of the United States.

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IN THE SUPREME COURT OF THE UNITED STATES

_____TERM, 1995

ALEXIS LAWRENCE, on behalf of

KEMMERLYN D. LAWRENCE, a minor,

PETITIONER,

VS.

DONNA SHALALA

SECRETARY OF HEALTH AND HUMAN SERVICES,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioner, Alexis Lawrence, on behalf of Kemmerlyn D. Lawrence, a minor, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on February 21, 1995.

OPINION BELOW

On February 21, 1995, the United States Court of Appeals for the Fourth Circuit entered its opinion affirming the judgment of the Honorable James C. Fox, Chief District Judge, United States District Court, Eastern District of North Carolina. A copy of the February 21, 1995 opinion is attached as Appendix "A".

JURISDICTION

On February 21, 1995, The United States Court of Appeals for the Fourth Circuit entered its opinion affirming the judgment of the trial court which denied the Petitioner benefits as a child of a deceased wage earner under the provisions of the Social Security Act, 42 U.S.C. Section 401, et. seq. Judicial review is authorized pursuant to Title 42, U.S.C. Section 405(g).

Appeal to the United States Court of Appeals for the Fourth Circuit is authorized by Title 28 U.S.C. 1291.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

5TH AMENDMENT: No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation.

14th AMENDMENT: Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and

of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person with its jurisdiction the equal protection of the laws.

UNITED STATES CODE

Title 42 U.S.C. Section 416(h)(2)(A): In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this title (42 U.S.C. Section 401 et. seq.), the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

NORTH CAROLINA GENERAL STATUTES

N.C.G.S. 49-14 (a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A certified copy of a certificate of birth of the child shall be attached to the complaint. Such establishment of paternity shall not have the effect of legitimation.

(b) Proof of paternity pursuant to this section shall

be by clear, cogent, and convincing evidence.

(c) No such action shall be commenced nor judgment entered after the death of the putative father.

(d) If the action to establish paternity is brought more than three years after the birth of a child, paternity shall not be established in a contested case without evidence from a blood or genetic marker test.

(e) Either party to an action to establish paternity may request that the case be tried at the first session of the court after the case is docketed, but the presiding judge, in his discretion, may first try any pending case in which the rights of parties or the public demand it.

N.C.G.S. 29-19(b) For the purposes of intestate succession, an illegitimate child shall be entitled to take by, through or from:

(1) Any person who has been finally adjudged to be the father of such child pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of G.S. 49-14 through 49-16;

(2) Any person who has acknowledged himself during his own lifetime and the child's lifetime to be the father of such child in a written instrument executed or acknowledged before a certifying officer named in G.S. 52-10(b) and filed during his own lifetime and the child's lifetime in the office of the Clerk of Superior Court of the county where either he or the child resides.

Notwithstanding the above provisions, no person shall be entitled to take hereunder unless he has given written

notice of the basis of his claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors.

STATEMENT OF THE CASE

This case was filed by summons and complaint on July 7, 1993, seeking judicial review of the decision of the Appeals Council, Social Security Administration, Department of Health and Human Services dated May 7, 1993, which denied survivor's benefits of a deceased wage earner to the petitioner. The Respondent Secretary filed answer admitting essentially all of the facts alleged in the complaint but concluding as a matter of law that the decision of the Appeals Council was correct. The Trial Court heard the case on Cross Motions for Judgment on the Pleadings filed by both parties. An order was entered on May 17, 1994, by the Honorable James C. Fox, United States District Court Judge, which upheld the decision by the Secretary and denied Petitioner's Motion for Judgment on the Pleadings.

Petitioner filed timely appeal to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals entered the decision on February 21, 1995, affirming the order of the Trial Court.

The essential facts necessary for a determination of this matter have been determined by the Administrative Law Judge at the hearing held on February 26, 1992, and are as follows:

1. Petitioner's father, Frank A. Lewis, Jr., SSAN 245-59-6557, died a fully insured individual under the Social Security Act on August 10, 1990.

2. Frank A. Lewis, Jr. has been determined to be the biological father of the Petitioner by the decision of the Administrative Law Judge supported by overwhelming evidence and proven beyond a reasonable doubt upon hearing of the Petitioner and all other parties in interest.

3. The Petitioner, by her guardian, brought an action in Carteret County, North Carolina, District Court, to establish paternity of the deceased wage earner, Frank A. Lewis, Jr. Prior to a final adjudication of that case, the wage earner was killed in a work related accident on August 10, 1990.

4. The wage earner did not acknowledge paternity in writing before his death, nor did the Petitioner live with or was supported by the wage earner prior to his death.

5. The blood grouping and DNA tests that were entered into evidence before the Administrative Law Judge were obtained at the wage earner's request in the civil paternity action prior to his death and established to a 99.99% degree of certainty that the deceased wage earner was the father of the Petitioner.

6. The mother of the Petitioner testified at the administrative hearing that she had had sexual relations with the deceased wage earner twice during the period of time when the Petitioner was conceived and she had no other

sexual relations with anyone else at that time.

7. But for the provisions of North Carolina General Statute, Section 49-14, preventing the entry of any judgment in a paternity case after the death of the putative father, the deceased wage earner, Frank A. Lewis, Jr., would have been declared the father of the Petitioner and an order of paternity would have been entered. The Administrative Law Judge determined that the evidence of record and the testimony of witnesses who would have also testified in the civil paternity action established beyond a reasonable doubt that the wage earner, Frank A. Lewis, Jr. was the father of the Petitioner, Kemmerlyn D. Lawrence

REASONS FOR GRANTING THE WRIT

In accordance with Rule 10.1 (a) of the Supreme Court Rules, Petitioner contends that the decision of the United States Court of Appeals for the Fourth Circuit in this case is in direct conflict with decisions of the same matter by the United States Court of Appeals for the Eleventh Circuit. On page 4 of the opinion of the United States Court of Appeals for the Fourth Circuit filed in this case (Appendix "A") the Court stated.

> "There can be little doubt that if this case had arisen in the neighboring Eleventh Circuit [the Appellant] could recover Social Security benefits under 42 U.S.C. 416 (h)(2)(A) as a child entitled to intestate distribution from his deceased father's estate." (emphasis added) "Nevertheless, as the Secretary points out, recovery of benefits in the Fourth Circuit is barred by Jones v. Schweiker, ... Jones, in contrast to Handley, holds

that even if a state intestacy statute is unconstitutional, the illegitimate child is not entitled to benefits."

The Eleventh Circuit's view of this matter also seems to be the view adopted by the Fifth Circuit Court of Appeals in Cox v. Schweiker, 684 F2d 310 (5th Cir. 1981) and the Eight Circuit Court of Appeals in Gross v. Harris, 664 F2d 667 (8th Cir. 1981). Counsel submits that because of the constitutionally impermissible inequity between the Petitioner and other children in the same circumstances who reside in Eleventh, Fifth or Eighth Circuit, this matter should be heard by this Court and a uniform ruling established so that all children are treated equally under the law.

CONCLUSION OF LAW

Because of the clear split of decisions between the Fourth Circuit Court of Appeals and the Eleventh Circuit Court of Appeals, and the importance of the federal question presented, Petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

Dated: April 27, 1995

Carl L. Tilghman
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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ALEXIS LAWRENCE, Guardian and next friend on behalf of Kemmerlyn D. Lawrence, a minor,
Plaintiff-Appellant,

and

KEMMERLYN D. LAWRENCE, a minor,
Plaintiff,

v.

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant-Appellee.

No. 94-1812

Appeal from the United States District Court
for the Eastern District of North Carolina, at Raleigh.
James C. Fox, Chief District Judge.
(CA-93-100-CIV-4-F)

Submitted: December 13, 1994

Decided: February 21, 1995

Before WILKINS, HAMILTON, and MICHAEL, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Carl L. Tilghman, Beaufort, North Carolina, for Appellant. Janice McKenzie Cole, United States Attorney, Barbara D. Kocher, Special

Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

Appellant, by and through her guardian, appeals the district court's grant of judgment on the pleadings to the Secretary on Appellant's action for surviving child's benefits pursuant to the Social Security Act, 42 U.S.C.A. § 416(h)(2)(A) (West 1991) ("the Act"). Finding no error, we affirm.

I

Appellant's father ("the insured") died in August 1990, in a work-related accident. Prior to the insured's death, the Appellant instituted a civil action in North Carolina to establish that the insured was Appellant's biological father. Blood testing of the insured, Appellant, and Appellant's mother established paternity with a 99.98% probability. Subsequent DNA tests established paternity with a 99.99% probability. The insured died before the North Carolina court rendered a final decision on the merits. Because North Carolina law prohibited entry of judgment in a paternity action after the death of the putative father, Appellant voluntarily dismissed this action. The insured did not acknowledge paternity in writing prior to his death, he did not live with the mother, and he had not contributed to Appellant's welfare.

Thereafter, Appellant filed an application for surviving child's benefits under the Act. The Secretary denied the application, and Appellant obtained review before an administrative law judge ("ALJ"). After a hearing, the ALJ found that paternity was established beyond a reasonable doubt and that Appellant was entitled to surviving

child's benefits under the Act. Although the Appeals Council agreed that substantial evidence supported the ALJ's paternity finding, it reversed the benefits award because Appellant had not satisfied entitlement to benefits under any provision of the Act. Appellant then filed a complaint in district court challenging the denial of benefits. The district court granted the Secretary's motion for judgment on the pleadings, and Appellant timely appealed.

II

The Social Security Act provides monthly benefits to minor children of deceased Social Security wage earners if they qualify, under the statutory definition, as dependents. An applicant who can show that she is entitled to inherit the insured's personal property under the intestacy laws of the state in which the insured was domiciled at the time of his death, is entitled to surviving child's benefits. 42 U.S.C.A. § 416(h)(2)(A) (West 1991).

Appellant argues that she is entitled to benefits because she should be entitled to inherit from the insured under North Carolina's intestacy laws.* An illegitimate child may inherit from her father in North Carolina only if paternity is established by a judgment entered *prior* to the father's death or by a written, notarized acknowledgement executed during the lifetime of both father and child. N.C. Gen. Stat. §§ 29-19; 49-14 (1984) (emphasis added). Hence, because paternity was not established prior to the insured's death, Appellant is not entitled to inherit under North Carolina law, and is not eligible for surviving child's benefits under the Social Security Act.

Appellant argues that this result is unduly harsh and clearly violative of the Equal Protection Clause. Appellant argues that North Carolina's intestacy laws unconstitutionally discriminate against the illegitimate children of deceased parents. To support her proposition, Appellant cites to an Eleventh Circuit case, *Handley v. Schweiker*, 697 F.2d 999 (11th Cir. 1983). In *Handley*, the Secretary denied an illegitimate child benefits because, like the present case, Alabama's statutory scheme required an adjudication of paternity during the

*Appellant concedes that she is not eligible under the other statutory provisions of the Act.

father's lifetime. *Id.* at 1001. The court held that Alabama's intestacy statute violated equal protection as applied because it made the status of illegitimacy an insurmountable obstacle to Handley's receipt of benefits. *Id.* at 1006.

As Appellant concedes, however, this Court has considered the issue and rejected the Eleventh Circuit's analysis. In *Jones v. Schweiker*, 668 F.2d 755 (4th Cir. 1981); *vacated sub. nom. Jones v. Heckler*, 460 U.S. 1077 (1983), we held that where a state statutory intestacy scheme resulted in an illegitimate child's inability to inherit from the insured, regardless of that statute's constitutionality, the child was not eligible for benefits under the Social Security Act. *Id.* at 759. We based our decision on *Mathews v. Lucas*, 427 U.S. 495 (1976), in which the Supreme Court "upheld treatment of a child born out of wedlock [that was] less favorabl[e] than those whose parents had regularized their relationships for purposes of determining whether they met the 'dependency' requirements of the social security act. It was held to be proper, or at least not impermissibly discriminatory, to condition entitlement upon 'dependency' at the time of death." *Jones*, 668 F.2d at 759 (citing *Mathews*, 427 U.S. at 507).

We subsequently reaffirmed our holding in *Parsons for Bryant v. Health & Human Servs.*, 762 F.2d 1188 (4th Cir. 1985). Like the present case, the Appellant in *Parsons* relied on Eleventh Circuit precedent to argue that North Carolina's inheritance barrier imposed on an illegitimate child whose father dies prior to an adjudication of paternity was unconstitutional. We again rejected that argument in the social security context stating:

> There can be little doubt that if this case had arisen in the neighboring Eleventh Circuit, [the Appellant] could recover Social Security benefits under 42 U.S.C. § 416(h)(2)(A) as a child entitled to intestate distribution from his deceased father's estate. Nevertheless, as the Secretary points out, recovery of benefits in the Fourth Circuit is barred by *Jones v. Schweiker*, ... *Jones*, in contrast to *Handley*, holds that even if a state intestacy statute is unconstitutional, the illegitimate child is not entitled to benefits.

Id. at 1190.

Appellant concedes that the current law in this Circuit bars her recovery of benefits. Accordingly, she asks this Court to reverse our precedent because of the unduly harsh result in her case. We decline to do so, however, because we have already engaged in an extensive review of the basis for our prior holdings. In *Jones*, we found that the "thrust" of the Social Security Act was to provide benefits to any child found to be dependent, and 42 U.S.C. § 416(h)(2)(A) was adopted to extend the means by which a child could establish this dependency after the insured's death. *Jones*, 668 F.2d at 760. To this end, § 416(h)(2)(A) aimed to extend benefits "where state law affirmatively showed that the legislature had concluded that there were factors making a dependency relationship probable, despite the absence of the regularizing aspects of marriage of the parents or other events linking the child to the parent." *Id.*

We stated further that Congress intended § 416(h)(2)(A) to extend the additional eligibility ground through application of state intestacy laws to the extent that the state legislature intended eligibility. *Id.* at 761 n.17. "It was not the purpose of the adoption of [§ 416(h)(2)(A)] to abide by imperatives, federal and constitutional in nature, which would nullify and contradict the law the [state] legislature wanted to make applicable." *Id.* Even if direct application of those state laws in denying intestacy inheritance might violate equal protection, this was not a reason to conclude that Congress intended to confer social security benefits beyond the limits intended by state legislatures.

This Court's review of a final decision regarding social security benefits is limited to ascertaining if the Secretary's findings are supported by substantial evidence and whether the correct law was applied. 42 U.S.C. § 405(g) (1988); *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990). "Supported by substantial evidence" means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Because we find substantial evidence supports the Secretary's findings and that the correct law was applied, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Appendix "B"

FILED

MAY 19 '94

DAVID W. DANIEL, CLERK
U.S. DIST. COURT
E.D. N.C.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION

No. 93-100-CIV-4-F

ALEXIS LAWRENCE o/b/o KEMMERLYN D. LAWRENCE, Plaintiff,

v.

DONNA E. SHALALA, Secretary of Health and Human Resources, Defendant.

ORDER

For the reasons set forth in the defendant's Memorandum in Support of the Secretary's Decision, the defendant's Motion for Judgment on the Pleadings is ALLOWED, the plaintiff's Motion for Judgment on the Pleadings is DENIED, and the Secretary's decision is AFFIRMED because substantial evidence supports that decision. As plaintiff acknowledges, the law in this circuit is against her. This court is without authority to revisit the seemingly harsh rule of decision of the Fourth Circuit Court of Appeals in Parsons for Bryant v. Health and Human Services, 762 F.2d 1188, 1190 (4th Cir. 1985) (even if a state intestacy statute is unconstitutional, illegitimate child in particular circumstance not entitled to child's insurance benefits under provisions of 42 U.S.C. § 416(h)(2)(A)).

SO ORDERED. This 17th day of May, 1994.

JAMES C. FOX
United States District Judge

I certify the foregoing to be a true copy of the original.
David W. Daniel, Clerk
United States District Court
Eastern District of North Carolina
By Margaret M. Bate
Deputy Clerk

AO 450 (Rev. 5/85) Judgment in a Civil Case

FILED

MAY 19 '94

DAVID W. DANIEL, CLERK
U.S. DIST. COURT
E.D. N.C.

United States District Court

EASTERN DISTRICT OF NORTH CAROLINA

ALEXIS LAWRENCE o/b/o KEMMERLYN D. LAWRENCE,
Plaintiff

V.

DONNA E. SHALALA, Secretary of Health and Human Resources,
Defendant

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 93-100-CIV-4-F

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED defendant's motion for judgment on the pleadings is allowed, and plaintiff shall have and recover nothing of the defendant.

THE ABOVE JUDGMENT WAS ENTERED TODAY, MAY 19, 1994, AND COPIES MAILED TO:

Mr. Carl L. Tilghman
P. O. Box 748
Beaufort, NC 28516

Ms. Barbara D. Kocher
Assistant U. S. Attorney
310 New Bern Avenue
Suite 800
Raleigh, NC 27601

I certify the foregoing to be a true copy of the original.
David W. Daniel, Clerk
United States District Court
Eastern District of North Carolina
By Margaret M. Bate
Deputy Clerk

May 19, 1994
Date

DAVID W. DANIEL
Clerk

Margaret M. Bate
(By) Deputy Clerk

94-9323

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

_____TERM, 1995

NO._____

_____

_____

ALEXIS LAWRENCE, on behalf of

KEMMERLYN D. LAWRENCE, a minor,

PETITIONER

VS.

DONNA SHALALA

SECRETARY OF HEALTH AND HUMAN SERVICES,

RESPONDENT,

_____

_____

RECEIVED
MAY 18 1995
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SUPREME COURT, U.S.

PROOF OF SERVICE

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF CARTERET)

Carl L. Tilghman, being first duly sworn, deposes and says:

That he is an attorney representing the Petitioner.

That on May 15, 1995, the petition for writ of certiorari in the above entitled case was deposited in the United States Post Office located in Richmond, Virginia, with first class postage prepaid, properly addressed to the Clerk of the Supreme Court of the United States and within the time allowed for filing said petition for writ of certiorari;

That an additional copy of the petition and the affidavit of the proof of mailing of the petition was served